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TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

October 11, 2010

TO: Internal File

THRU: James D. Smith, Permit Supervisor *DS 18 Oct 2010*

FROM: Kevin Lundmark, Team Lead *KL*

RE: Response to DO-04A, Andalex Resources Inc., Wildcat Loadout, C/007/0033, Task #3618

SUMMARY:

Division Order DO-04A, dated December 9, 2004, describes the effect of fugitive dust on plants and wildlife and requires that Andalex Resources Inc. (Andalex, or the Permittee) make adjustments to their operations plan to reduce wind blown deposition of coal fines. Andalex submitted a permit amendment to the Division on September 16, 2010 to address the deficiencies identified by the Division during review of the previous response to DO-04A. This Technical Memorandum reviews the amendment for compliance with Administrative requirements of the Utah R645 Coal Mining Rules.

The amendment is recommended for approval at this time. The Division has identified that some errors that remain in the Violation History presentation of the amendment (Appendix B Part B). These errors are in no way related to the response to DO-04A and therefore should not further delay fulfillment of the requirements prescribed by the Order. The Division encourages Andalex to correct the outstanding errors as they may affect future permitting actions at Wildcat Loadout or at other mines controlled by Andalex or UtahAmerican Energy, Inc.

TECHNICAL ANALYSIS:

GENERAL CONTENTS

IDENTIFICATION OF INTERESTS

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

Analysis:

Section R645-301-112 identifies the Applicant as Andalex Resources, Inc. (entity 112234). Reference to the Tower Division has been removed from the narrative and the OFT. A dissolution date for the Tower Division is likely August 2006, corresponding with the ending dates provided for the former officers and directors. In August 2009, the Division corrected the AVS records to transfer the permit from Andalex Resources Tower Division to Andalex Resources, Inc., entity number 112234.

Appendix A, Part 1 provides the ownership family tree (OFT) in Section 1. The federal identification numbers of parent companies are identified on the OFT. Andalex Resources, Inc is wholly owned by UtahAmerican Energy, Inc, which is wholly owned by Murray Energy Corporation, which is wholly owned by Murray Energy Holdings, Inc. Information on the officers and directors of the parent companies is provided in Appendix A, Part 1. The officers of affiliated companies are also listed. Dave Shaver is identified as the Resident Agent for the Wildcat Loadout (C/007/033) in Section R645-301-112.200 page 1-5. A new address was provided and the AVS database has been updated accordingly.

Appendix A, Part 2 includes coal mining permits held in Utah and across the nation by Andalex Resources, Inc. affiliates.

Plate 16 illustrated the SMCRA permit area and surrounding land ownership. Plate 1A identifies BLM Right of Way U-48027. MSHA ID numbers for the Wildcat Loadout and the refuse pile are provided in Section R645-301-112.700.

Findings:

The information provided meets the Identification of Interests requirements of the State of Utah R-645 Coal Rules.

VIOLATION INFORMATION

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

Analysis:

The MRP indicates in Section R645-301-113 that Andalex Resources, Inc., its affiliates, or persons controlled by or under common control with Andalex Resources, Inc. have not had a permit revoked or suspended and have not forfeited a bond in the last five years. Appendix B Part B provides violation history for the years 2004 through April 2010 for Utah Coal Mines controlled by Andalex Resources, Inc and affiliates. The violation history included in Appendix B Part B contains the following errors or omissions:

Horse Canyon Mine (Permit C0070013)

- 10036 Status is incorrect (should be "Vacated", not "Pending")
- 10045 Date Issued is incorrect (should be 9/23/2009), Status should be "Terminated", Abatement Action should be "Corrected", and Appeal Y/N should be "Y"
- 10058 Missing NOV 10058, issued 6/30/2010 by DOGM to UEI for "Failure to maintain diversion", Status = terminated, Abatement Action = Corrected, Appeal Y/N = Y

An Applicant Violator System (AVS) check on August 17, 2010 indicated that there were there were no outstanding NOV's or CO's or any bond forfeitures of sites under common control with the Andalex Resources, Inc. The AVS check did identify a cessation order associated with OhioAmerican Energy Inc; however, this violation is reportedly "conditional" status, indicating a settlement, payment plan or pending challenge.

Findings:

The information provided generally meets the Violation Information requirements of the State of Utah R-645 Coal Rules. The Division has identified that some errors that remain in the Violation History presentation of the amendment (Appendix B Part B). These errors are in no way related to the response to DO-04A and therefore should not further delay fulfillment of the requirements prescribed by the Order. The Division encourages Andalex to correct the outstanding errors as they may affect future permitting actions at Wildcat Loadout or at other mines controlled by Andalex or UtahAmerican Energy, Inc.

Pursuant to R645-301-113.300, The Violation History information included in Appendix B Part B should be corrected to address the following errors and omissions:

Horse Canyon Mine (Permit C0070013)

- 10036 Status is incorrect (should be "Vacated", not "Pending")
- 10045 Date Issued is incorrect (should be 9/23/2009), Status should be "Terminated", Abatement Action should be "Corrected", and Appeal Y/N should be "Y"
- 10058 Missing NOV 10058, issued 6/30/2010 by DOGM to UEI for "Failure to maintain diversion", Status = terminated, Abatement Action = Corrected, Appeal Y/N = Y

RIGHT OF ENTRY

Regulatory Reference: 30 CFR 778.15; R645-301-114

Analysis:

The permit area comprises 100.19 acres (Section R645-301-114) and is shown on Plate 1, Plate 1A, Plate 16, and other plates. Section R645-301-114 also describes BLM Right of Way agreement U-48027, which has been in effect since 1982 and was enlarged from 91 acres to 270 acres in 2007 (Appendix B-Part A-6 through A-12). Within this Right of Way, 12.5 acres are under a right of way agreement between the Utah Railway and the Bureau of Land Management (p.1-20). Section R645-301-114 (page 1-10) refers to an overlapping right of way for State Highway 139 and the (Carbon County) Consumers Road; however, State Highway 139 no longer exists and reference to this highway should be removed from Section R645-301-114.

An Agreement between Andalex Resources, Inc. and Beaver Creek Coal Co. has been in effect since 1988 (Appendix B Part A-5). A surface lease agreement with the Utah Railway has been in place since 1981 (Appendix B Parts A-2 through A-4).

Findings:

Information provided in the MRP meets the Right of Entry requirements of the State of Utah R-645 Coal Rules.

LEGAL DESCRIPTION AND STATUS OF UNSUITABILITY CLAIMS

Regulatory Reference: 30 CFR 778.16; 30 CFR 779.12(a); 30 CFR 779.24(a)(b)(c); R645-300-121.120; R645-301-112.800; R645-300-141; R645-301-115.

Analysis:

The permit area is 100.19 acres of which 12.5 acres are under a right of way agreement between the Utah Railway and the Bureau of Land Management (p.1-20). A legal description of the permit area is provided in Section R645-301-114.

Lands designated unsuitable are defined in 30 CFR 761.11 as lands within National Parks, Wildlife Refuge Systems, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, National Recreation Areas, National Forest, National Historic Register of Historic Places, or within 100 ft of a public road (excepting the intersection with a mine haul road); within 300 ft of an occupied dwelling, public park, school, church or any public building; within 100 ft of a cemetery.

MRP Section R645-301-115.300 states that the permit area is within 100 feet of two public [county] roads, Consumers Road and Trestle Road. Both of these public roads pass through the permit area, as shown on Plate 16 and Plate 1A. Plate 1 incorrectly identifies Consumers Road as State Highway 139 and requires correction.

A public hearing is not required on this action. The proposed pond is within the existing permit boundary and therefore an opportunity for hearing has previously been provided for under R645-300-121.150. Because this area is within an existing permit the unsuitability rules do not apply. R645-103-330 & -332 specifically identify that lands covered by a permit issued under the Act are exempt from Unsuitable designation. The Permittee will need obtain various permits from Carbon County prior to construction of Sediment Pond "G" next to the Trestle Road; however, this does not affect the permitting of the action under the Utah R645 Coal Mining Rules.

Findings:

The information provided meets the minimum requirements for Legal Description and Status of Unsuitability Claims requirements of the State of Utah R-645 Coal Rules.

PERMIT TERM

Regulatory References: 30 CFR 778.17; R645-301-116.

Analysis:

Andalex Resources, Inc. was issued a permanent program permit for this site on May 5, 1989, which was successively renewed on May 5, 1994 and May 5, 1999, May 5, 2004, and May 5, 2009. Andalex Resources Inc. holds a current and valid State of Utah mining permit that expires May 5, 2014. The phases of operations at the Wildcat Loadout are described in Section R645-301-142 of the MRP.

Findings:

Information provided in the MRP meets the Permit Term requirements of the State of Utah R-645 Coal Rules.

PUBLIC NOTICE AND COMMENT

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

Analysis:

This amendment does not require public notice as a significant permit revision because it does not meet the criteria for significant permit revision in R645-303-224. The permit area remains is 100.19 acres of which 12.5 acres are under a right of way agreement between the Utah Railway and the Bureau of Land Management (MRP, Section R645-301-142). The increased disturbance places coal mining and reclamation activity (construction and maintenance of a sediment pond) within 100 feet of the Trestle [public] Road. A public hearing per R645-103-234.200 is not required on this action; however, because the proposed pond is within the existing permit boundary and therefore an opportunity for hearing has previously been provided for under R645-300-121.150.

Findings:

Information provided in the MRP meets the Public Notice and Comment requirements of the State of Utah R-645 Coal Rules.

REPORTING OF TECHNICAL DATA

Regulatory Reference: 30 CFR 777.13; R645-301-130.

Analysis:

Individuals and firms that contributed to the mining and reclamation plan are listed in Section 2, R645-301-130 or with their respective reports, e.g. James Nyenhuis, Appendix D Supplement.

Findings:

The information provided in the MRP meets the Reporting of Technical Data requirements of the State of Utah R-645 Coal Rules.

PERMIT APPLICATION FORMAT AND CONTENTS

Regulatory Reference: 30 CFR 777.11; R645-301-120.

Analysis:

The permit application has been formatted to align with the Utah R645 Coal Mining Rules. A notarized signature of the Resident Agent indicating that the information included in the application is true and correct accompanied the application.

Findings:

The information provided meets the Permit Application Format and Contents requirements of the State of Utah R-645 Coal Rules.

RECOMMENDATIONS:

The application is recommended for approval at this time. The Division has identified that some errors that remain in the Violation History presentation of the amendment (Appendix B Part B). These errors are in no way related to the response to DO-04A and therefore should not further delay fulfillment of the requirements prescribed by the Order. The Division encourages Andalex to correct the outstanding errors as they may affect future permitting actions at Wildcat Loadout or at other mines controlled by Andalex or UtahAmerican Energy, Inc.